general credit of the maker. *Munger* v. *Shannon,* 61 N. Y. 251; *Brill* v. *Tuttle,* 81 N. Y. 454. If the obligation is primarily that of the association recognized as an artificial entity, a restriction upon the liability of the shareholder is in no wise a limitation upon its general credit. While joint-stock companies possess many of the characteristics of corporations, *Youngstown Coke Co.* v. *Andrews Bros. Co.,* 79 Fed. 669; *Waterbury* v. *Merchants' Union Express Co.,* 50 Barb. (N. Y.) 157; *Oak Ridge Coal Co.* v. *Rogers,* 108 Pa. St. 147, and for some purposes have been so considered, *State* v. *Adams Express Co.,* 66 Minn. 271; *Express Co.* v. *State,* 55 Ohio St. 69; *Matter of Jones,* 172 N. Y. 575; *Platt* v. *Wemple,* 117 N. Y. 136, none of the decisions seem to have so far recognized their artificial existence as to relieve the members from their primary liability for the debts of the company. The minority of the court recognize the negotiability of the bond by declaring the limitation void; WERNER, J., basing his decision upon the ground that it is repugnant to the terms, tenor and purpose of the bond. In view of the statute (Code Civ. Proc. § 1919), which provides that the association cannot be sued in its business name, and the officers which represent it can only be sued upon such obligations as are enforcible against the shareholders, it seems that the minority holding is the more logical.

CARRIERS—FREE TRANSPORTATION AS A PENALTY.—Plaintiff, being about to board defendant's train, pointed out his baggage to the conductor and brakeman, who placed it in the baggage car, and when his ticket was demanded, he refused to surrender it until given a check for his baggage. He was ejected, receiving injuries for which he recovered one thousand dollars damages. A statute provides that for refusal by the carrier to give a baggage-check when requested, the passenger might recover a penalty of twenty dollars in an action for damages and that if no fare had been paid none should be collected and if paid that it must be returned. *Held,* that the liability to carry free of charge upon refusal to give a baggage-check was as much a part of the penalty as the cash penalty prescribed therein. *Tarr* v. *Oregon Short Line R. Co.* (1907), — Idaho —, 93 Pac. Rep. 957.

In *Haskins* v. *Dern,* 19 Utah 101, a penalty is defined as a punishment imposed by law or by contract for doing or failing to do something that it was the duty of the party to do. If the liability to give free transportation under the circumstances stated were a part of the penalty it would seem that the plaintiff must recover it in the action, authorized by statute for recovering the remainder—the twenty dollars, but if the check is refused, one part of the penalty may be determined and exacted at once by the passenger without judicial proceeding, while the remaining part must await the determination of an action for damages. In the *Railroad Commission Cases,* 116 U. S. 307, it was held that under pretense of regulating fares and rates, the state cannot compel a railroad to carry passengers or property without reward nor do that which amounts to taking private property without due process of law. If deprivation of the right to charge reasonable rates takes place in the absence of investigation by judicial machinery, there is, in effect, a taking of property without due process of law. *Chicago, Milwaukee and St. Paul*

Ry. Co. v. *Minnesota,* 134 U. S. 418. A law imposing a penalty upon a railroad for refusing to give baggage-checks may be a proper regulation. *McGowan* v. *Wilmington, etc. R. Co.,* 95 N. C. 417, *27 Am. and Eng. R. Cases,* 64; *Missouri Pacific R. Co.* v. *Humes,* 115 U. S. 512, *22 Am. and Eng. R. Cases,* 557. One requiring free transportation of passengers would not be valid. The reasoning of the court in the principal case is not convincing in thus holding an invalid requirement to be valid when designated as part of a penalty.

CARRIERS—WAIVER OF STIPULATIONS AS TO SUITS.—Plaintiff seeks to recover the value of a mule which was delivered by defendant to a connecting carrier in an injured condition and which was, therefore, killed by the latter. Plaintiff filed his claim with the connecting carrier which transmitted it to defendant. Five months later defendant returned it to the second carrier, asking that it be withdrawn. About forty days later, plaintiff wrote defendant in regard to the claim and was informed that it had been returned to the second carrier. A term in the contract limited the right to bring suit to six months from the time the action accrued. *Held,* the delay by the defendant in handling the claim operated as a waiver of this stipulation. *Howze* v. *New Orleans and N. E. R. Co.* (1908), — Miss. —, 45 So. Rep. 837.

By stipulation in the contract, the carrier frequently secures the right to notice before unloading injured shipments, or within a certain time in case of loss or damage or before commencing suit; and these contracts if reasonable, are held valid by the great weight of authority. HUTCHINSON ON CARRIERS (3d. Ed.), § 442 and cases cited. The stipulation is for the benefit of the carrier and may be waived expressly or by conduct inconsistent with an intent to rely on it. *Soper* v. *Ry Co.,* 113 Mich. 443; *Railway Co.* v. *Grimes,* 71 Ill. App. 397; *Hess* v. *The Ry. Co.,* 40 Mo. App. 202. The courts are exceedingly liberal in finding such waivers as a matter of law, *Frankfurt.* v *Weir,* 83 N. Y. Supp 112; *Railway Co.* v. *Jacobs,* 70 Ark 401; *Wabash Ry. Co.* v. *Brown,* 152 Ill. 484; *Railway Co.* v. *Reeves,* 97 Va. 284. But where, as in the principal case, the stipulation is that suit shall be commenced within a limited time, the general rule is, that if the limitation is reasonable, it will be conclusive upon the owner of the goods, *Gulf, etc. Ry Co.* v. *Gatewood,* 79 Tex. 89; *Central, etc. Railroad Co.* v. *Soper,* 59 Fed. 879. Here, waiver arises only when there is conduct on the part of the carrier which may reasonably induce the shipper to believe that his claim will be paid without suit, *Railway Co.* v. *Silegman,* — (Tex. Civ. App.) —, 23 S. W. 298. Evidence of waiver of stipulated rights should be explicit, *Gault* v. *Van Zile,* 37 Mich. 22. In the principal case, it does not appear that plaintiff knew that his claim had been referred to defendant nor that defendant returned it to the second carrier, nor that defendant communicated with plaintiff at all until the time for commencing suit was past. The question may fairly be raised: was defendant's conduct in itself, sufficient to induce in plaintiff a reasonable belief that his claim would be paid without suit. It has